S.B. CIVIL WRIT PETITION NO.2927/1993

Babu Lal **Vs.** Commissioner, Devasthan
Deptt. & Ors.

Date : 8.9.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA

Mr. N.S. Acharya for the petitioner.

Mr. K.N. Johsi)
Mr. Rajendra Mehta) for the respondents.
Mr. M.S. Singhvi)
Mr. O.P. Boob, Dy. Government Advocate.

BY THE COURT:-

Heard learned counsel for the parties.

This writ petition is directed against the order of Assistant Commissioner, Devasthan Department, Bikaner dated 18.11.1991 rejecting the petitioner's application for initiating proceedings under Section 38 of the Rajasthan Public Trust Act as affirmed by the order of Devasthan Commissioner dated 26th April, 1993 Annex.3 and 5 respectively.

The petitioner claims himself to be one of the descendants of the original settlers of the temple. He has moved an application before the Assistant Commissioner, Devasthan. The application reads as under:-

"बअदालत सहायक आयुक्त देवस्थान
विभाग बीकानेर

विषय: मन्दिर की भूमि पर नाजायज तामीर किए जा रहे अतिक्रमण व निर्माण को रोके जाने व हटाये जाने बाबत।

श्रीमानजी,

निवेदन है पक ग्राम सालासर के श्री हनुमान सेवा समिति (पव्लिक ट्रस्ट) की मन्दिर की भूमि पर ग्राम के ही कुछ प्रभावी व्यक्ति नाजारज तामीर करे रहे है तथा मौके पर सड़क को आसपास बाडे भी बना लिये है तथा अपना कब्जा पक्का करने के लिये प्रयत्नशील है। नाजायज कव्जा करने वाले श्री झाबरमल पुत्र श्री छगनलाल पुजारी, पुरषोतम पुत्र छगनमल पुजारी, रामकिशोर, सत्यनारायण, हीरालाल पिसरान छगनमल पुजारी व ओमप्रकाश पुत्र रामनिवास पुजारी साकिन सालासर है। इन्होंने अपने प्रभाव से मंदिर की भूमि पर नाजायज कव्जा किया है। श्रीमान् चाहे तो जरिये इंसपेक्टर जांच करवा सकते है। करीब डेढ वर्ष हो चुका है। अगर मन्दिर की भूमि पर से नाजायज कव्जा नहीं हटाया गया तो इनका पक्का कव्जा हो जायेगा।

यह कि सार्वजनिक हित में भी यह उचित नहीं है। नाजायज कव्जा को तुरन्त हटाये जाने की कार्यवाही देवस्थान विभाग को करनी चाहिये।

अत: प्रार्थना है कि मन्दिर की भूमि पर किये जा रहे अवैध निर्माण व कव्जे करने वालों को तुरन्त नोटिस दिया जावे व इंसपेक्टर से मौके की रिपोर्ट ली जावें। ताकि शीघ्र ही अनाधिकृत कव्जाधारीयों को

हटाया जावें।

प्रार्थी
बाबूलाल पुत्र श्री रामदयाल पुजारी
सा० सालासर तहसील सुजानगढ़
जिला चूरू (राज०)

प्रस्तुतकर्ता विनयअनुसार
के हनुमान सेवा समिति अध्यक्ष को शिकायत की प्रति भेजते हुये यहां उपस्थित होकर स्पष्टीकरण पेश करने हेतु तथा नाजायज कव्जा धारियों को भी नोटिस जारी करें।

एसडी
बाबूलाल"

After issuing notice of this application by order dated 18.11.1991, the Assistant Commissioner, Devasthan found that the temple has already been held to be a private property and not public trust and it is not prima facie proved by the applicant that the disputed property belongs to the trust settled by Exhibit 1 dated 8.3.1992. In that view of the matter, the Assistant Commissioner declined to initiate any proceeding and the proceeding was dropped. However, the applicant was left free to take any action in his personal capacity in respect of alleged illegal possession.

This order was affirmed as noticed above.

The petitioner in this writ petition admits that

the temple Salasar is a private property and not a public trust as in the proceedings under Rajasthan Public Trust Act it has been so held after initiating the proceedings. But, he stated that since he has made an application relating to the trust properties, which is registered as a public trust, the Assistant Commissioner ought to have exercised jurisdiction in respect of the properties of the trust.

Suffice it to say that from the application reproduced hereinabove, nothing has been spelt out about which property of trust, the applicant was making grievance and was seeking enquiry into the alleged encroachments if any on any of the property of the temple. As a matter of fact, the allegation was as if the temple belong to the Sewa Samiti which fact is not correct and, therefore, apparently, there was no occasion for Assistant Commissioner, Devasthan to initiate any proceedings in pursuance of such a vague application. Moreover, it appears that the petitioner is brother of one of the trustees of the Trust and also claims himself the proprietory interest in it. The root of the matter appears

to be a private dispute in that regard.

The jurisdiction under Section 38 cannot be invoked on such vague assertions. Be that as it may, as the petitioner's right to take action in his personal capacity has not been effected. No relief can be granted in this petition.

Accordingly, this petition fails and is hereby dismissed.

[RAJESH BALIA], J.

babulal/